

Filed for intro on 02/05/2001  
SENATE BILL 297 By  
Haynes

HOUSE BILL 709  
By Sands

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 17, Part 1, relative to issuance of subpoenas.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 17, Part 1, is amended by adding the following as a new, appropriately designated section:

40-17-1\_\_.

(a) Upon request by a law enforcement officer, as defined in §39-11-106, and when pertinent to establishing a criminal offense, a judge or magistrate shall issue to any part of the state a subpoena for the production of documentary evidence commanding the person, or designated agent for service of process, to whom it is directed to produce any books, papers, records, documents, tangible things, or information and data electronically stored, to the law enforcement officer and at such reasonable time and place designated upon the subpoena. The clerk of the court of record exercising criminal jurisdiction over the issuing judge or magistrate shall provide the subpoena signed, but otherwise in blank, to the law enforcement officer who shall complete the form. The subpoena shall

describe the specific materials requested and set forth the date and manner the materials are to be delivered to the officer. The subpoena shall contain a certification by the officer that the requested materials are pertinent to a specific criminal offense and contain a reference to this act as authority for the subpoena. No subpoena shall be issued under this act until the district attorney general, or assistant district attorney general, shall certify upon the subpoena that the requested materials are pertinent to establishing the criminal offense so designated by the subpoena and that such offense occurred within the judicial district of the district attorney general.

(b) The subpoena may be served by the officer in any county of the state by personal service, registered mail, or by any other means with the consent of the person named in the subpoena. The officer shall maintain a copy of the subpoena and endorse thereon the date and manner of service as proof thereof.

(c) The court of record exercising criminal jurisdiction over the issuing judge or magistrate and upon motion made promptly and before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion to quash upon the advancement of the reasonable costs of compliance, but any such assessment of costs shall be balanced against the interests of justice and the public welfare.

(d) No person shall be excused from complying with a subpoena for the production of documentary evidence issued under this act on the ground that production of the requested materials may tend to incriminate such person. Any person claiming such privilege against self incrimination must assert such claim before the appropriate criminal court of record promptly and before the time designated for compliance therewith. If the district attorney general thereafter

certifies to the court that the interests of justice demands the production of the requested materials for which the claim of privilege is asserted, then the court shall order the production of such materials and no such individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning the requested materials the person was compelled to produce.

(e) No subpoena for the production of documentary evidence under this act shall be directed to, or served upon, any defendant, or his counsel, to a criminal action in this state.

(f) If any person, without cause, refuses to produce the requested materials within the time and manner designated for compliance by the issuing judge or magistrate, the district attorney shall seek a writ of attachment from the criminal court of record to seize the person within the state and that person shall be held in civil contempt and committed to jail therein to remain without bail until willing to comply with the subpoena as the law directs.

SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.